

Can I Have A Job?-

Our country continues to attempt to work its way out of the worst recession in decades. As the job market slowly opens up with new opportunities for the hundreds of thousands of employees who were terminated as a result of the economic downturn, a new set of challenges is on the horizon for employers looking to replenish their workforce. Now is a great time for employers to prepare for the onslaught of applicants and to protect against the attendant exposure to claims arising out of such an employment process. There are a number of steps employers should consider in preparation for expansion of their workforce including amending job descriptions, review of hiring policies, and review of interview guidelines and training.

When employers finally are in a position to replenish their workforce, it is vital that they do so without creating new exposure to employment claims. Because of the large number of highly qualified employees who were downsized in conjunction with the recession, employers will be faced with a plethora of applications once the job market opens up. Employers should consider reviewing the job descriptions which are presently in place. Many job descriptions contain educational requirements which are unnecessary for the position. The job description should accurately reflect not only qualifications for the position but also the essential job functions. If you want to change the position to expand responsibilities, the job description must reflect the change. In the event of any claim of discrimination, the EEOC will review the job description in place to determine whether there was a legitimate non-discriminatory business reason for the decision to hire one applicant over another.

A review of hiring policies is also appropriate to determine whether any revisions are necessary. For instance, does the employer give any consideration to former employees who have been terminated due to lack of work? Many employers prefer to rehire former employees because there are fewer unknowns. However, the policy should not guarantee priority for former employees. If you have a better applicant, you want to be able to hire that person over a former employee. The policy should state that a person's service will be considered along with other factors such as experience, training, etc. Hiring policies should be revised to reflect the employer's hiring practices and philosophy. Obviously, if a collective bargaining agreement is in place, contract terms may dictate rehiring former employees.

Interview guidelines and training of recruiters are additional areas for review. Do the recruiters know what questions are legally permissible and which are not? With the increased number of non-compete and confidentiality agreements in place, inquiries should be made of applicants as to whether they are under any non-compete or confidentiality agreements. Interview questions should always be job related.

The number of EEOC charges and employment claims are at an all time high. As employers begin to increase their workforce, it is vital that employment decisions and policies are legally defensible. Ensuring that job descriptions, hiring policies and interview guidelines are updated is a terrific risk management step to prevent future employment claims.